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on behalf of

THE POKER PLAYERS ALLIANCE

UNITED STATES SENATE COMMITTEE

on

INDIAN AFFAIRS

“The Future of Internet Gaming: What is at Stake for Tribes?”

November 17, 2011

Chairman Akaka and Members of the Committee, I am pleased to have this opportunity to testify before you today on the challenges and opportunities that licensed Internet poker would present for Tribal Governments. I am here in my role as Chairman of the Poker Players Alliance, an organization of 1.2 million Americans who like to play a great American game in casinos, in their homes, in bars, in charitable games and on the Internet. They do so for recreation, for camaraderie, for intellectual challenge and stimulation, and some of them do it for a living.

The PPA has been at the forefront of advocating for U.S. licensing and regulation of Internet poker for more than five years. Every year, millions of Americans play poker on the Internet on offshore sites licensed by foreign government, with varying degrees of consumer protection. No U.S. federal law and few state laws make it illegal for Americans to play poker on the Internet; when a prohibition does exist it generally applies to the person receiving the wager -- the operator of an Internet gaming site. Even today an American with a checking account and a high-speed Internet connection can deposit money on an offshore account and play poker, gamble on casino games, bet on sports and wager on horse races. What Americans cannot do is play Internet poker on a site that is licensed and regulated in the U.S., that creates jobs for American workers, or that provides revenue for federal, state and of course tribal governments. It is well-past time for Congress to change that, and there are efforts underway, particularly in the U. S. House of Representatives, to do so.

In evaluating the implications of Internet gaming for Indian Country, I would commend to the committee's attention a white paper commissioned by the National Indian Gaming Association

entitled “Internet Gambling Developments in International Jurisdictions: Insight for Indian Nations.

The study notes that regulation of Internet gaming and Internet poker is not a groundbreaking endeavor. While the U.S. may be well behind the curve, regulation of this activity has been ongoing for several years throughout Europe and other parts of the world; in fact nearly 80 jurisdictions have regulated Internet gambling. Through appropriate regulation and oversight, countries like the United Kingdom, Denmark, France, Italy, Belgium and Australia are providing their citizens with strong consumer protections and they are also reaping the economic benefits. A *New York Times*¹ story reported on the positive economic impact regulated online gambling has had on economies throughout the European Union.

Today, Internet gambling is an estimated 30 billion dollar global industry. In 2010, it was estimated that revenues generated from U.S. players was roughly 6 billion dollars. A recent economic impact study examined the potential of a U.S. regulated market and revealed that it would yield more than 30,000 new jobs and tens of billions in tax revenue and economic activity for the United States. Today, each and every dollar and job created by this industry is being done to the benefit to other countries and not the United States and not our nation’s Indian tribes.

As I understand it, the purpose of this hearing is not to decide whether or not Congress should pass poker licensing legislation; rather, it is to identify where the interests of Indian Country lie with respect to such legislation, and how Tribal governments and Tribal gaming enterprises

¹ Europe Unleashes Online Gambling to Fill Cooffers. *New Yorks Times*, July 27, 2010

might participate in a licensed Internet poker or Internet gaming market. I will focus my testimony accordingly.

In discussing these questions, I would begin with a categorical statement: The Poker Players Alliance believes that Indian Country should be substantial players in a regulated U.S. market. We would like to see Tribal governments as federally-recognized licensing bodies. We would like to see Tribal gaming enterprises as licensed operators, as well as affiliates and network partners for other licensed operators. In the poker marketplace, PPA speaks for the consumers, and competition is always good for consumers.

Models of Federal Internet poker regulatory structures are still in flux, but for discussion purposes, let us assume it looks something like what is proposed in H.R. 2366, Rep. Joe Barton's Internet poker bill. Under that bill, state and tribal governments that want to license Internet gaming must apply to the U.S. Department of Commerce for recognition as a qualified licensing body. Commerce would issue a set of regulations delineating what state and tribal licensing programs must contain. Once a particular jurisdiction's licensing program is certified by Commerce, that jurisdiction can begin issuing licenses, and any licensee of a recognized jurisdiction could accept Internet poker play from any state or tribe that had not opted out of the federal system. State and tribal governments could opt-out of the federal system by having their chief executive notify the Secretary of Commerce of their intent to opt-out; licensees would be prohibited from accepting play from any jurisdiction that had opted out. Finally, Tribal governments could participate as licensors, and tribal gaming enterprises could participate as

licensees, but Tribal governments would not be allowed to license their own gaming enterprises to take play from off of the reservation.

As you all know very well, the central construct upon which Indian gaming is built is the principle of geographic sovereignty -- the fact that federally-recognized tribal governments have the right to govern the actions of people and businesses on their reservation land, with little or no interference from federal and state governments. This principle has allowed many Indian tribes to use casino gaming as a substantial tool for economic development.

Certain entrepreneurial tribes have used the proceeds of their successful gaming operations to invest in assets -- both gaming and non-gaming -- outside their reservation. Examples of this include the Seminoles' acquisition of the Hard Rock chain, and the investment of the Mashantucket Pequot tribe in a casino in Pennsylvania. In these cases, the relevant Tribe's business enterprise submitted to taxation and regulation from the jurisdiction in which the facility was located.

The challenge posed by Internet gaming is this: under established U.S. law, an Internet wager transaction occurs in two places -- the location of the merchant server and the location of the player's computer. This dual jurisdiction will produce some serious policy questions, and I appreciate this committee's interest in addressing them. PPA has staked out several positions on some of these issues, and I would like to briefly state them here.

If federal Internet poker legislation is enacted, we believe it should make clear that participation by state governments, Tribal governments, state-licensed entities or tribally licensed entities does not affect the prerogatives of states or tribes under the Indian Gaming Regulatory Act. The decision of a tribal government to become a licensor or a tribal gaming enterprise to become a licensee should not require re-negotiation of a Class III compact. The decision of a state without commercial casino gaming to license Internet poker or to not opt-out of a federal system should not turn that state into a Class III state for IGRA purposes. The IGRA Class III compacting system was designed to deal with the geographic proximity between states and gaming tribes. On the Internet, geographic proximity is meaningless, and under every proposed bill, states and tribes have the right to opt-out of Internet poker.

Another issue is the question of taxation of Internet poker. As we understand it, the question of whether poker licensing legislation will include new tax provisions has not been resolved. Naturally, those taxes paid in the ordinary course of doing business will apply -- for example, players paying taxes on their winnings -- but we are told that no decision has been made as to whether there will be additional tax provisions as have been proposed in previous drafts.

If tax provisions are included in a licensing bill, the PPA is optimistic that creative minds could structure an Internet tax regime that could be acceptable to all sides. Such a regime would avoid breaching the principle that Indian gaming is not subject to taxation, but that also avoids providing tribal gaming an unfair competitive advantage in the marketplace.

A similar issue arises around the question of regulation of Internet gaming by Tribal gaming commissions. I think the position of the commercial gaming industry is that tribes can be licensors or licensees, but that they cannot license themselves to take play from off of the reservation. Indian Country has been clear that they would oppose any regime that would subject tribal gaming to non-federal regulation. Many in Congress are at least very skeptical of - if not outright opposed to -- the idea of creating a new federal bureaucracy to license and regulate Internet gaming. Certainly, the NIGC does not currently have the staff, the resources or the expertise to do so. One possible solution would be for one tribe or a consortium of tribes to become sort of a super-regulator for the rest of Indian country.

Some drafts of Internet gaming legislation have given preference to certain state gaming authorities over other state and tribal gaming commissions, based on those states' history of regulating gaming, or the size of their regulated industry. PPA understands the desire on the part of Internet poker proponents to avoid a "race to the bottom," where a particular regulator uses lax regulation to attract licensees, and to advantage those licensees in the marketplace. However, rather than having legislation pre-judge who will be the best regulator, we believe that the federal agency certifying state programs should evaluate each proposed regime on its merits. Those state and tribal gaming authorities who propose the most comprehensive and rigorous regulatory programs should be the ones recognized first.

Finally, the National Indian Gaming Association has taken the position that Internet gaming legislation should provide net benefits to Indian Country. Today, Internet poker is a multi-billion dollar industry that is entirely offshore. By bringing that industry on-shore and allowing tribes to

participate, it is difficult to see how such legislation could fail to benefit Indian Country.

Concerns that licensed Internet poker will cannibalize tribal brick-and-mortar gaming are simply misplaced. First of all, the overwhelming majority of tribal brick-and-mortar gaming is slots and house-banked table games. While some tribes may have poker rooms, poker is a very small percentage of tribal gaming revenue. Poker players and slot players are very different people. Second, Internet poker has been around for almost ten years -- any competitive impacts would already have been felt.

I would like to highlight, however, one developing situation which may have far-reaching consequences for tribal gaming. Several states are in the process of authorizing their state lotteries to sell virtual instant scratch-off tickets on the Internet. A scratch-off ticket on the Internet makes a computer work exactly like a slot machine: A player deposits money into a playing account, they buy one "ticket", and the software displays several values on the screen. If the values match up a certain way, the player wins; if they don't, the player plays again. As I mentioned before, the mainstay of Indian Gaming is slot machines. The benefit to Indian tribes of having slot machines will be significantly less if state lotteries are turning every computer in the country into a slot machine. If Indian Country is looking for a competitive threat to their core business, virtual scratch-off tickets are a far greater threat than regulated poker.

Mr. Chairman, I would again like to express my gratitude for this opportunity to testify, and I look forward to answering any questions committee members may have.